Schaus Roofing and Mechanical Contractors, Inc. *and* Sheet Metal Workers International Association, Local 18, AFL–CIO. Case 30–RC–5772

May 23, 1997

DECISION ON REVIEW AND ORDER

BY CHAIRMAN GOULD AND MEMBERS FOX AND HIGGINS

On June 21, 1996, the National Labor Relations Board granted the Employer's request for review of the Acting Regional Director's Decision and Direction of Election (pertinent portions of which are attached as an appendix). The Acting Regional Director directed an election in a unit of the Employer's sheet metal employees, excluding employees referred to as pipefitters and service technicians. The election was conducted on June 16, 1996, and the ballots were impounded pending resolution of the issue raised on review.

Having carefully considered the entire record in light of the Employer's request for review and the opposition brief filed by the Petitioner, the Board has decided to affirm the Acting Regional Director's decision finding that the petitioned-for unit of sheet metal workers is an appropriate unit for collective bargaining.

In *Burns & Roe Services Corp.*, 313 NLRB 1307, 1308 (1994), the Board defined a craft unit as a "distinct and homogeneous" unit of journeymen, apprentices, and helpers who are primarily engaged in tasks not performed by others that require substantial craft skills and the use of specialized tools and equipment. The factors the Board considers are formal training or apprenticeship programs, functional integration, overlap of duties, whether work assignments are based on need or made along craft lines, and common interests in wages and other terms and conditions of employment.

Although the Employer's sheet metal and other employees work on teams in the field and are under common supervision, and although heating department employees have comparable wage rates and working conditions, these factors do not outweigh the Employer's adherence to a system of formal apprenticeships in distinct trades, the absence of cross-training, and the inability of employees in one trade to do the skilled work of the other trades, with the consequent assignment of skilled work along craft lines. Though some employees performed unskilled work in other trades, the overlapping of duties in the lesser-skilled aspects of a trade does not preclude a craft unit. *Burns & Roe*, supra at 1309. We, therefore, affirm the Acting Regional Director's decision.

ORDER

The Regional Director is directed to open and count the ballots cast by the employees in the election, and to take further appropriate action.

APPENDIX

ACTING REGIONAL DIRECTOR'S DECISION AND DIRECTION OF ELECTION

The Employer, a Wisconsin corporation, is engaged in roofing and mechanical contracting including heating, air-conditioning, and refrigeration from its Manitowoc, Wisconsin facility. The parties agree that the unit includes 12 employees in various job classifications working as sheet metal journeymen, apprentices, and helpers. At issue are five employees classified as service technicians and five employees who perform piping work as well as some sheet metal work. Petitioner seeks a traditional craft unit of only sheet metal workers. To the contrary, the Employer contends that the only appropriate unit includes the service technicians and the other five employees, as dual-function employees and based on their shared community of interest.

Facts:

Business Operation:

Michael Schaus, president part owner, described the business as performing industrial commercial light commercial and residential roofing, heating, piping installation, and service. The business operation consists of three departments employing approximately 72 employees:

> Roofing Department, headed by Jim Schaus, Vice President; Service Department, headed by Jeff Cornick, Service Manager; and Heating Department, headed by Michael Schaus, with 22 employees.

The classifications of employees in the heating department include sheet metal foreman, sheet metal journeyman, sheet metal laborer, sheet metal mechanic, sheet metal helper, and sheet metal worker, involving 12 employees who the parties agree are included in the unit; and sheet metal mechanic/-apprentice, pipefitter/sheet metal worker, laborer, laborer/welder, and service technicians,[3] who are in dispute. The heating department may design the heating, ventilation, air-conditioning (HVAC) system or receive a blueprint. The work then includes fabricating the necessary duct work, installing the ducts and other equipment, and setting up the equipment to operate properly. The sheet metal work includes fabricating and installing the air handling equipment, including installation of wiring, piping, and controls. Sheet Metal Foreman Richard Bartelme has worked for the Employer as a sheet metal worker for about 10 years, and considers himself a skilled sheet metal worker and unskilled pipefitter. He described his work on a job as getting the equipment to be installed, perfecting the blueprint, designing

[3] The Employer, who seeks inclusion of the service technicians in this unit, did not present evidence regarding the work performed by employees in the service department. No service technician testified.

the fitting sizes, fabricating parts from sheet metal, and installation of the duct work, sometimes with the assistance of another employee on the crew. Bartelme estimates that installation typically occupies 40 percent of the time on a job, 15 percent of which is carpentry work. Bartelme has performed some threading of pipes, but only seldom.

Pipefitting work involves installation of pipes which conduct steam, gas, or foam. The service technicians do low-voltage wiring, startup of equipment after placement, and installation of controls. According to Schaus, he assigns work based on employees available at the time and their particular skills.

Pipefitters:

At issue in the heating department are five employees who perform piping installation work, who are classified by the Employer, respectively as follows:

James Boutin	Pipefitter/Sheet Metal
Christopher Czekala	Sheet Metal Mechanic/-Apprentice
Gregory Delsman	Laborer/Welder
Charles King	Pipefitter/Sheet Metal
Douglas Strauss	Laborer

Only Delsman testified. According to the Employer, Boutin is a journeyman level pipefitter and sheet metal worker. The Employer estimates, without contradiction, that Boutin has spent 5 percent of his time in the last year doing sheet metal fabricating in the shop and 20 to 30 percent of his time doing light commercial sheet metal installations. Delsman installs sheet metal blow pipes, as do other sheet metal workers. Bartelme has observed Boutin and Delsman installing sheet metal duct work, but not doing fabricating work. Delsman has worked for the Employer for 3 years. He classified himself as a welder pipefitter, but testified that he performs various work as assigned, including sheet metal installation but not fabrication. The Employer estimates, without contradiction, that King spends more than half of his time doing sheet metal work. Bartelme has observed King assembling fabricated parts in the shop. Strauss has been employed as a helper to both pipefitters and sheet metal workers.

The Employer's undisputed summary shows that, during the period from April 1, 1995, to April 1, 1996, Boutin and King performed both piping installation work and sheet metal work as well as work in the shop; Delsman and Strauss performed both piping installation and sheet metal work. Boutin spent the majority of his working time performing piping installation work, while the other three spent more of their working time on sheet metal work than on piping installation. The testimony indicates that such sheet metal work would have been less skilled installation work, not skilled fabrication. Conversely, according to Michael Schaus, sheet metal workers Steve Grant, Dale Hietpas, Christopher Czekala, James Boutin, and Patrick Richmond do some pipefitting work as well as traditional sheet metal work.

Four employees are currently enrolled in apprenticeship programs. Christopher Czekala, sheet metal mechanic/apprentice, and Terry Weluicke, service technician, are enrolled in the ABC HVAC/R (heating, ventilating, air-condi-tioning/refrigeration) pipefitters apprenticeship program. Daniel Loch and Robert Neuenfeldt, sheet metal workers, are enrolled in a sheet metal apprenticeship programs.[4]

Service Technicians:

Also at issue are five service technicians,[5] none of whom testified. The Employer's undisputed summary shows that during the period from April 1, 1995, to April 1, 1996, the five service technicians spent a total average of about 13 percent of their working time performing in-house maintenance work, about 70 percent performing service work, and about 17 percent performing installation, startup, and controls installation work. They perform only less skilled sheet metal work. Testimony in the record described the service technicians performing the installation, startup, and controls work after completion of the sheet metal and piping work and installation of the equipment..It appears that service technicians perform their work with little or no contact with the petitioned-for sheet metal workers. The record does not reflect the nature of the other service work which the service technicians primarily perform, or the extent to which it compares to or is part of the work performed by employees in the service department.

The record contains exhibits showing that Petitioner has nine major area agreements in Wisconsin for sheet metal craft units which include in their jurisdiction servicing work. In May 1995, Petitioner and the Employer stipulated to a unit including sheet metal workers and HVAC field service technicians, but excluding plumbing employees in Case 30–RC–5688. At that time, Christopher Czekala was included as a sheet metal worker, without challenge.

Terms of Employment:

Wage rates range from $8.70 per hour for a laborer to $18.45 for a service technician. More specifically, service technician Ken Karbon is the highest paid employee in the department; followed by two sheet metal foremen and one sheet metal journeyman at $16.35, and another service technician at $16.15. The wages of the five service technicians range from $13.35 to $18.45 per hour. The wages of the 12 undisputed sheet metal workers range from $8.70 to $16.35 per hour. The wages of the five employees who perform pipefitting work range from $10.95 to $15.56 per hour. All employees fill out timecards on which they record the number of hours they have worked and code numbers for the type of work performed.

The Employer has an employee handbook applicable to all employees. All employees have a 30-day probationary period. All employees have paid vacation and six paid holidays. All employees are eligible to participate in a group health insurance plan with shared premiums. After days of employment, any employee employed for 1000 hours in a year is eligible to participate in a 401(k) plan, in which the Employer matches 25 percent of employee contributions up to 6 percent of wages. After a year of employment, all employees are eligible to participate in a profit-sharing plan. Employees wear the same uniform and fill out the same time-

[4] The record does not contain P. Exh. 1, regarding the apprenticeship programs, because Petitioner did not furnish the exhibit to the reporter.

[5] Randy DePauch, Ken Karbon, Paul Loewenbein, Jeffrey Uhlig, and Terry Welnicke.

cards. The Employer pays for costs of employment-related education for all employees. The Employer conducts general training programs, not technical in nature attended by all employees.

Current employee Boutin transferred from the service department to pipefitter/sheet metal work; Richard Bartelme from the roofing department to sheet metal work; and Jeffrey Uhlig from sheet metal to service technician work.

While the record does not contain direct evidence regarding hiring, management, or supervision of these employees, it appears that employees work independently on small jobs, and are variously responsible for crews on larger jobs. The record contains no evidence of to whom these employees report on a daily basis, who inspects their work, or by whom any of them have been disciplined. Given the absence of any reference to other intermediate supervision, it appears that Michael Schaus runs this department.

Traditional Sheet Metal Craft Work:

It is undisputed that Petitioner is a statewide local covering all but four counties in Wisconsin, with over 4700 members who perform sheet metal work. Petitioner typically represents units limited to sheet metal workers. The International Union has existed since 1888; Petitioner has existed as an amalgamated local since 1982. Petitioner concedes that employees in a unit of sheet metal workers perform work which requires other than sheet metal skills, such as carpentry.

Traditional Pipefitter Craft Work:

The undisputed testimony presented by Petitioner is that the steamfitting/pipefitting trade primarily deals with the installation and erection of piping systems, and associated accessories, to handle all types of fluids, with some incidental sheet metal work. Sheet metal work may involve work with flat stock up to 1/8 inch thick, formed into duct work; while steamfitter/pipefitter work involves lighter gauge material already formed into tubing and devices installed to conduct fluids. The steamfitters/pipefitters have existed as a separate trade union since 1885, chartered in the Milwaukee area in 1887. The State of Wisconsin established a separate steamfitting/pipefitting apprenticeship program in the 1940s; and a refrigeration service apprenticeship about 1970. Traditionally, fabrication, installation, and balancing of sheet metal duct work is outside the jurisdiction of steamfitters/pipefitters and not permitted by contract. Startup of components in the system, known as "commissioning of a system," and "wet" balancing falls within the category of refrigeration technician service of the steamfitting/pipefitting trade. Air balancing of the system is sheet metal tradework. Pipe welding is a certified steamfitting/pipefitting skill which cannot be performed by a sheet metal worker. Sheet metal workers receive training in template development and use of specialty machinery for fabricating, and steamfitters/pipefitters receive training in the basic physics of fluids, which the other does not receive.

Positions of the Parties:

Petitioner contends that the unit of sheet metal workers sought in the petition constitutes an appropriate unit. Petitioner argues that sheet metal work is a traditional craft which constitutes an appropriate unit even though the employees may perform nonsheet metal work, or nonsheet metal workers perform sheet metal work, or sheet metal work is integrated with the rest of the employer's operation, citing *E. I. du Pont & Co.*, 162 NLRB 413 (1966); *Paasche Airbrush Co.*, 101 NLRB 277 (1952); and *Armstrong Tire & Rubber Co.*, 104 NLRB 892 (1953). Similarly, Petitioner argues, the pipefitters constitute a separate craft, traditionally distinct from sheet metal work in which the service technicians are properly included. Alternately, Petitioner notes that the service technicians simply service or start up the units after they are installed, which work does not rise to the level of a craft, citing *Ford Motor Co.*, 96 NLRB 1075 (1951).

On the other hand, in a wholly different analysis, the Employer contends that the five employees who perform pipefitting work are dual-function employees who regularly perform sheet metal work for sufficient periods of time to demonstrate a community of interest with the full-time sheet metal workers, citing *Continental Cablevision*, 298 NLRB 973 (1990). Regarding the five service technicians, the Employer argues that they perform traditional sheet metal work, were included in the stipulated unit a year ago, and have traditionally been included in other units represented by Petitioner or, alternatively, are dual-function employees.

Analysis and Conclusions:

Petitioner correctly observes that the Board has treated sheet metal work as a distinct craft for purposes of unit composition. Such does not end the inquiry, however. In *Burns & Roe Services Corp.*, 313 NLRB 1307, 1308 (1994), the Board discussed its standard for finding appropriate a separate craft unit, as follows:

> A craft unit is one consisting of a distinct and homogenous group of skilled journeymen craftsmen, who, together with helpers or apprentices, are primarily engaged in the performance of tasks which are not performed by other employees and which require the use of substantial craft skills and specialized tools and equipment. In determining whether a petitioned-for group of employees constitutes a separate craft unit, the Board looks at whether the petitioned-for employees participate in a formal training or apprenticeship program; whether the work is functionally integrated with the work of the excluded employees; whether the duties of the petitioned-for employees overlap with the duties of the excluded employees; whether the employer assigns work according to need rather than on craft or jurisdictional lines; and whether the petitioned-for employees share common interests with other employees, including wages, benefits, and cross-training. [Footnotes omitted.]

In *Burns & Roe Services Corp.*, the Board found electrical employees to constitute a distinct and homogeneous craft unit in that they worked organizationally in a separate department, had separate supervision, were highly skilled journeymen or apprentices, and typically performed only craft work. The Board also noted that the employer, in that case, did not disregard craft distinctions in making work assignments, and did not assign employees to work solely according to need, distinguishing *Longcrier Co.*, 277 NLRB 570 (1985), wherein employees were assigned to particular jobs

according to need rather than by job classification or along craft lines. Id. at 1308 fn. 9. Further, the Board noted that, even when on teams with other employees, electricians typically worked only on electrical systems and with only limited contact with nonelectrical employees. There had been no transfers by employees into or out of the electrical group. Nonelectrical employees performed electrical work involving unskilled tasks, which the Board noted did not preclude finding the separate unit appropriate, citing *E. I. du Pont & Co.*, supra. The Board said that it was not unmindful that there were some factors favoring a combined unit: some contact between employees and overlap of job functions, common personnel policies, and similar wages and benefits. The Board noted, "However, a petitioned-for unit need only be an appropriate unit. Further, the Employer has not shown that the lines of separate craft identity have been so blurred as to preclude a separate electrical unit." [Footnote omitted.] *Burns & Roe Services Corp.*, supra at 1309. The Board compared *Brown & Root, Inc.*, 258 NLRB 1002 (1981), "in which the Board noted, inter alia, that the employer did not follow strict craft lines, assigned and utilized its employees according to need, and the evidence was insufficient to establish that the work of the requested employees was different from that performed by excluded employees." Id. at 1309 fn. 13.

Neither party discussed *Burns & Roe Services Corp.*, or the related cases, in its brief.

As in *Burns & Roe Services Corp.*, this case involves some factors which favor the petitioned-for separate craft unit, and some which do not. Of the 12 agreed-on sheet metal worker employees, 5 are journeyman level and 2 others are enrolled in the sheet metal apprenticeship program. Only the skilled sheet metal workers lay out and perfect blueprints and fabricate duct work, which involves the use of specialized equipment. The record does not reflect who performs the air balance testing. Michael Schaus only generally testified that he assigns work based on employee availability and skills, which does not clearly blur the distinction between sheet metal work and piping work. On the other hand, James Boutin is skilled at both sheet metal work and pipefitting work, and Richard Bartelme is a skilled sheet metal worker, who performs less skilled pipefitting work. Of the five employees who perform pipefitting work, only Boutin spent more of his working time on piping installation than on sheet metal installation work. The sheet metal and piping employees work together on crews, and assist each other in installation.

The service technicians perform separate work on the units after installations service technician Terry Welnicke is enrolled in a pipefitters' HVAC/R apprenticeship program. The earlier inclusion of service technicians for purposes of another election at this Employer, or in other units in other area agreements, is not binding in this case.

The sheet metal workers, piping workers, and service technicians work under common management and supervision, and subject to a common personnel policy and other benefits and conditions of employment. The range of wage rates does not vary significantly for the three employee groups. One sheet metal worker has become a service technician, and, apparently, a service technician will become a pipefitter on successful completion of the HVAC/R apprenticeship.

While some factors favor an overall unit, the determinative evidence is that the Employer assigns skilled air systems design, fabrication, installation, and balancing work to sheet metal workers, and skilled liquid systems work to pipefitters. Thus, the Employer assigns skilled work along separate craft lines. There is only some overlap in performance of less skilled work. Therefore, I find the evidence insufficient to establish that the Employer has so blurred the separate identity of sheet metal work and piping work as to preclude a separate sheet metal unit. *Burns & Roe Services Corp.*, supra at 1309.

The undisputed evidence in the record, provided in the testimony of Michael Schaus, is that James Boutin is a journeyman level pipefitter and sheet metal worker, who spends over a quarter of his worktime performing sheet metal work, some of which is skilled fabrication work. Based on the evidence in record, I find that Boutin is appropriately included in the sheet metal craft unit.

On the other hand, I find the evidence fails to establish that the service technicians in this case perform an amount of traditional skilled sheet metal craft work sufficient to require their inclusion in the craft unit. It appears that service technicians have little work-related contact with sheet metal workers. There is no evidence of the training necessary to perform installation, startup, and controls work, or of the extent to which the work herein compares to that within the jurisdiction of sheet metal workers in other units. In this case, service technicians spend a substantial proportion of their worktime performing some kind of service work apparently distinguished from installation, startup, and controls work. Finally, service technician Terry Welnicke is enrolled in the HVAC/R pipefitters' apprenticeship program. Therefore, I find that the service technicians need not be included in the appropriate craft unit of sheet metal workers.